

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
RIGOBERTO ALVARADO-GUIZAR,  
Defendant.

NO. CR-01-6013-EFS

**ORDER DENYING PETITIONERS'S  
SECOND 2255 MOTION FOR POST  
CONVICTION RELIEF**

Before the Court, without oral argument, is Petitioner's Motion for Post Conviction Relief Pursuant to Title 21 U.S.C. Section 2255 (Ct. Rec. 138). On October 18, 2005, this Court denied Petitioner's previous motion under section 2255 (Ct. Rec. 137).

A second or successive petition under section 2255 may not be filed in this Court unless the petitioner first obtains an order authorizing this Court to consider the petition from the United States Court of Appeals for the Ninth Circuit. 28 U.S.C. §§ 2255 and 2244(b)(3)(A). In order to obtain such an order from the Ninth Circuit, petitioner must show either:

(1) newly discovered evidence that, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255. As Petitioner has not met the requirements of this provision, Petitioner's motion is denied.

**ACCORDINGLY, IT IS HEREBY ORDERED:** Petitioner's Motion for Post Conviction Relief Pursuant to Title 21 U.S.C. Section 2255 (**Ct. Rec. 138**) is **DENIED**.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and to provide a copy to Petitioner.

**DATED** this 25<sup>th</sup> day of January 2007.

S/ Edward F. Shea  
EDWARD F. SHEA  
United States District Judge

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